IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 7928 of 2007(R)

IA.690/07 IN OS.599/2005 of I ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

M.SAINABA BEEVI, AGED 68 YEARS, D/O MYTHEEN PEERUMAL, NADUTHUNDATHU HOUSE, POOVAR, THIRUVANANTHAPURAM, NOW RESIDING AT CRA-25, UDAYAGIRI GARDEN, DAMODAR NAGAR, CHERUVAICKAL, SREEKARIYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.RAJAN
SRI.S.ARUN RAJ

RESPONDENTS:

1. SARASWATHY, W/O.LATE THANKAPPAN PILLAI, HOUSE NO.4/498, POOVAR, NEYYATTINKARA, THIRUVANANTHAPURAM.

2. BINDU D/O SARASWATHY, DO. DO.

3. SINDU D/O SARASWATHY, DO. DO.

4. MANJU D/O SARASWATHY, DO. DO.

5. MALLIKA D/O SARASWATHY, DO. DO.

6. MOHAMMED SALI, S/O.MOHAMMED NOOHU, POOVAR, NOW RESIDING AT HOUSE NO.G3, VILLA BINA, BRIGHT STREET, NAGERCOIL, KANYAKUMARI DIST., TAMIL NADU.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 7928 of 2007 R

JUDGMENT

Heard the counsel for the petitioner.

2. Petitioner is the second defendant in Exhibit P1 suit (OS 599/05) filed before the I Additional Munsiff's Court, Neyyattinakara for declaration and consequential injunction. The suit is valued under Section 25(b) of the Court Fees and Suits Valuation Act. According to the petitioner, when the second plaintiff was examined as PW1, she has deposed that the scheduled property, which takes in ten cents of land and a building therein, would be worth Rupees ten lakhs. Pursuant thereto, the petitioner filed Exhibit P4 application objecting to the pecuniary jurisdiction of the Munsiff's Court, as he took it into his head that in the light of the value deposed to by the second plaintiff, the suit will fall outside the pecuniary

limits of jurisdiction of the Munsiff's Court.

3. The court below dismissed Exhibit P4 petition, vide Exhibit P6 order, holding that the petitioner cannot raise the question of improper valuation of the suit at the fag end, when evidence is adduced at trial, including the case in the special list. It was so held by the Munsiff, relying on the decision of this Court in **WE-BUILD PVT.LTD. v. C.KAMALESWARAN** (1981 KLT 773). It is urged by the counsel for the petitioner that a contrary view has been taken by this Court in the decision reported in **Cherootty v. Purushothaman** (2005 (2) KLT 84). But, the subsequent decision relied on by the counsel for the petitioner is a decision by a Single Bench of this Court, whereas the decision in 1981 KLT 733 aforesaid is by a Division Bench. In the circumstances, the learned Munsiff rightly followed the decision in 1981 KLT 733 aforesaid, which held that the question of improper valuation of suit or insufficiency of

court fee paid is not a matter that can be raised after the stage of recording evidence, affecting the defendants on the merits of the claim. Counsel for the petitioner submits that the defendants' evidence is not over, but that the plaintiffs' evidence is closed. When the plaintiffs' evidence is closed, that means, recording of evidence, affecting the defendants on the merits of the claim, had already been let in.

4. It is further worthy to note that the contention that is urged by the petitioner is that the suit should have been valued for Rupees ten lakhs. The argument is advanced on a wrong notion, as the valuation is required to be made as prescribed by Section 7 of the Court Fees and Suits Valuation Act. The order of the court below, refusing to consider the question of propriety of valuation and sufficiency of court fee paid, in the circumstances, cannot be interfered with, as the order cannot be faulted when the evidence of the

plaintiffs is already closed.

In the result, this writ petition is devoid of merit and is dismissed.

8th March, 2007 (K.P.Balachandran, Judge)

tkv